

Briefing Paper for ND Coyote Station TV Permit Renewal

Background:

In an April 11, 2013 source determination, the North Dakota (ND) previously determined that Coyote Station (CS) and Coyote Creek Mining Company (CCMC) should be considered two separate sources for permitting purposes, and in so doing concluded that the two entities “do not appear to be under common control.” During the public comment period for the recent renewal of CS’s title V permit in 2018, commenters (the Voigts, via their attorney, JJ England) challenged aspects of this prior determination¹ (including aspects related to control) and asserted that CS and CCMC should be considered a single stationary source.² Both CS (through its majority owner, Otter Tail Power Company) and CCMC submitted comments in response, asserting that the two entities were not under common control, in part based on an analysis of “control” under the framework recommended by the EPA in its April 30, 2018 Meadowbrook Letter (*Meadowbrook*).³ In the ND’s October 2, 2018 letter to the EPA, the state concluded—also based on the principles outlined in *Meadowbrook*—that “it is apparent to the Department that the CCMC mine and the Coyote Station are not under ‘common control’ as the owners of the Coyote Station do not have authority to dictate decisions that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements for the CCMC mine.” For support, the NDDH provided one example stating that, “the CCMC mine is subject to a fugitive dust control plan and it is the sole responsibility of CCMC to demonstrate compliance with the plan.” The NDDH requested the EPA’s position on this matter as part of the EPA’s review of the CS title V renewal permit.

EPA responded with a letter to NDDH sent October 2, 2018, informing ND that EPA believes that ND did not adequately discuss concerns stemming from the Lignite Sales Contract between Coyote Station and Coyote Creek Mine. Language therein seems to qualify under *Meadowbrook* as giving CS control over CCM, and EPA urged ND to take a closer look at the contract terms in developing their source determination.

On February 14, 2019, EPA and ND staff and management had a call to clarify the contents of EPA’s October 2 letter and discuss what issues ND would need to focus on in order to improve their source determination. On February 15, 2019, ND provided EPA with a second draft source determination that they hoped addressed the concerns raised by the public commenters and by EPA in our response letter. EPA staff discussed this draft over the phone with ND and gave some initial feedback. ND then sent a third draft on March 21, 2019, which EPA again responded to over the phone. EPA’s feedback focused on getting ND to reconcile the apparent control established by the language in the Lignite Sales Contract. *Meadowbrook* defines control as, “the

¹ The public commenters’ current challenges to the 2013 source determination appear to stem in part from new information concerning the relationship between the two entities that NDDH did not previously consider during its 2013 source determination, including information related to the location of CCMC’s coal processing equipment, and the terms of a contract between Coyote Station and CCMC.

² As a consequence, in the context of the current title V renewal permit action, the commenters assert that Coyote Station’s current title V permit is deficient because it does not include conditions related to CCMC’s operations.

³ Letter from William L. Wehrum, Assistant Administrator, Office of Air and Radiation, EPA, to the Honorable Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection (April 30, 2018), available at https://www.epa.gov/sites/production/files/2018-05/documents/meadowbrook_2018.pdf (“Meadowbrook Letter”).

power or authority of one entity to dictate decisions of the other that could affect the **applicability** of, or **compliance** with, relevant air pollution regulatory requirements” (emphasis added).

Ex. 5 Deliberative Process (DP)

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On June 25th, 2019 ND provided a fourth draft of their source determination, along with the first draft of their response to comments for the CS TV permit.

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Source determination:

Ex. 5 Deliberative Process (DP)

- 1) ND argues: “However, the CS station cannot simply demand more coal than the 3.2 million ton annual restriction and potentially force the CCM into additional applicable air pollution requirements given that the amount of coal mined at CCM is restricted by legally enforceable PTC/PTO conditions. Department review and approval is necessary to increase the maximum amount of coal mined, so the amount of coal mined (and associated air pollution requirements) is governed by the Department’s permitting process and not by the CS station.” Page 3.

Ex. 5 Deliberative Process (DP)

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Response to Comments:

Ex. 5 Deliberative Process (DP)

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